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**UNITED STATES DISTRICT COURT**  
**NORTHERN DISTRICT OF CALIFORNIA**

MLW MEDIA LLC,

Plaintiff,

v.

WORLD WRESTLING ENTERTAINMENT,  
INC.

Defendant.

Case No. 5:22-cv-00179-EJD

**DEFENDANT WORLD WRESTLING  
ENTERTAINMENT, INC.'S RESPONSE  
TO PLAINTIFF MLW MEDIA, LLC'S  
MOTION TO STRIKE WORLD  
WRESTLING ENTERTAINMENT,  
INC.'S AFFIRMATIVE DEFENSES**

Date: October 26, 2023  
Time: 9:00 a.m.  
Location: Courtroom 4

The Hon. Edward J. Davila

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

Plaintiff MLW Media LLC’s (“MLW”) motion to strike (“Mot.”) never should have been filed, and should be denied. World Wrestling Entertainment, Inc. (“WWE”) served its Answer to MLW’s Amended Complaint on August 14, 2023. Eleven days later, MLW filed this motion without ever so much as mentioning the issues raised in it to WWE, much less asking WWE to amend or withdraw any of its Affirmative Defenses, before filing. As MLW acknowledges, the purpose of motions to strike under Rule 12(f) is “to avoid the expenditure of time and money that will arise from litigating spurious issues.” Mot. 4; *see Whittlestone, Inc. v. Handi-Craft Co.*, 618 F.3d 970, 973 (9th Cir. 2010). But MLW’s motion does the opposite. It wastes the Court’s time and resources by litigating issues that could have, and should have, been resolved between the parties.

WWE’s August 14 pleading is entirely proper, and meets the relevant pleading standards established by the Ninth Circuit. All that Rule 8 requires of WWE is to “affirmatively state” its affirmative defenses. Fed. R. Civ. P. 8(c). The key question is whether WWE has provided MLW “fair notice” of the bases of those defenses. And the Ninth Circuit has held that such “fair notice” only requires describing such defenses in “general terms.” *Kohler v. Flava Enters., Inc.*, 779 F.3d 1016, 1019 (9th Cir. 2015). While it is true that some courts in this District have applied *Twombly and Iqbal*’s plausibility standards to affirmative defenses (as MLW argues) notwithstanding *Kohler*, MLW ignores that courts are split on this question and that the predominant approach in the Ninth Circuit applies the more forgiving “fair notice” standard. WWE has met this “fair notice” standard by pleading self-evident and well-recognized affirmative defenses of the type that are routinely pleaded in similar terms in district courts across this Circuit.

Moreover, motions to strike are heavily disfavored in this Circuit. Courts have described the movant’s burden as “heavy,” “demanding,” and “formidable,” and regularly deny such motions in the absence of a showing of prejudice to the moving party. MLW has not even attempted to make any such showing of prejudice here. Nor could it. MLW does not explain

1 how the supposed insufficiency of WWE's pleading renders it unable to adequately pursue  
 2 discovery, nor how any of WWE's affirmative defenses as pleaded will create additional,  
 3 burdensome discovery. In fact, WWE has already provided information about one of the key  
 4 defenses that MLW seeks to strike, in response to MLW's interrogatories. For these reasons,  
 5 MLW's motion should be denied.

6 Nevertheless, to avoid more needless litigation over these issues, WWE requests, in the  
 7 alternative, that MLW's motion be denied as moot and submits herewith (as Exhibit A, with a  
 8 redline against the prior Answer attached as Exhibit B) a proposed amended Answer that  
 9 addresses several of the objections that MLW has raised by withdrawing certain Affirmative  
 10 Defenses and adding detailed allegations that eliminate any possible doubt as to the sufficiency  
 11 of the remaining Affirmative Defenses.

12 For these reasons, and as set out below, WWE respectfully requests that the Court either  
 13 deny MLW's motion in its entirety as legally unfounded, or, in the alternative, accept WWE's  
 14 proposed amended answer and deny the motion as moot.

## 15 **II. LEGAL STANDARDS**

16 The Federal Rules of Civil Procedure permit the Court to strike any "insufficient defense  
 17 or any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f).  
 18 However, "motions to strike are rarely granted in the absence of a showing of prejudice to the  
 19 moving party." *Smith v. Wal-Mart Stores*, 2006 WL 2711468, at \*2 (N.D. Cal. Sept. 20, 2006).

20 "Motions to strike are regarded with disfavor [ ] because of the limited importance of  
 21 pleadings in federal practice and because they are often used solely to delay proceedings." *Ctr.*  
 22 *for Food Safety v. Sanderson Farms, Inc.*, 2019 WL 8356294, at \*1 (N.D. Cal. Mar. 18, 2019).  
 23 "[C]ourts will generally 'grant a motion to strike only when the moving party has proved that the  
 24 matter to be stricken could have no possible bearing on the subject matter of the litigation.'"  
 25 *Pauly v. Stanford Health Care*, 2022 WL 103546, at \*2 (N.D. Cal. Jan. 11, 2022) (quoting  
 26 *Ewing v. Nova Lending Sols., LLC*, 2020 WL 7488948, at \*2 (S.D. Cal. Dec. 21, 2020)). "In  
 27 resolving a motion to strike, the pleadings must be viewed in the light most favorable to the  
 28 nonmoving party." *Munoz for J.M. v. Watsonville Cmty. Hosp.*, 2017 WL 11673925, at \*1 (N.D.

Cal. Nov. 27, 2017). “If there is any doubt whether the challenged matter might bear on an issue in the litigation, the motion to strike should be denied, and assessment of the sufficiency of the allegations left for adjudication on the merits.” *Ctr. for Food Safety*, 2019 WL 8356294, at \*1. “Reflecting the highly disfavored nature of a motion to strike, the burden of persuasion facing a movant has been described as a ‘substantial’ burden, a ‘demanding’ burden, a ‘heavy’ burden, a ‘sizable’ burden, and a ‘formidable’ burden.” *Lapena v. Las Vegas Metro. Dep’t*, 2022 WL 479496, at \*1 n.3 (D. Nev. Feb. 16, 2022) (citations omitted). In addition, the “countervailing interest in conserving resources of the parties and the court” is a factor weighing in favor of denying such motions. *Bausch Health US, LLC v. Virtus Pharms. OPCO II, LLC*, 2019 WL 7708939, at \*2 (N.D. Cal. Oct. 25, 2019) (denying motion to strike affirmative defenses).

“The key to determining the sufficiency of pleading an affirmative defense is whether it gives plaintiff fair notice of the defense.” *Howard v. Tanium, Inc.*, 2022 WL 597028, at \*2 (N.D. Cal. Feb. 28, 2022) (quoting *Wyshak v. City Nat’l Bank*, 607 F.2d 824, 827 (9th Cir. 1979)). In *Kohler v. Flava Enterprises, Inc.*, the Ninth Circuit held that “‘fair notice’ required by the pleading standards only requires describing the defense in ‘general terms.’” 779 F.3d 1016, 1019 (9th Cir. 2015). Notwithstanding *Kohler*, some courts in this District, but not all, have required affirmative defenses to satisfy the plausibility pleading standard set forth in *Twombly and Iqbal*. However, “[c]ourts are split” as to whether to apply *Twombly and Iqbal* or whether to apply the more relaxed “fair notice” standard, consistent with the “predominant approach in the Ninth Circuit,” which reads *Kohler* as affirming this “fair notice” pleading standard for affirmative defenses. *Pauly*, 2022 WL 103546, at \*3. “[T]he fair notice standard does not require factual support for affirmative defenses,” *Cota v. Aveda Corp.*, 2020 WL 6083423, at \*4 (S.D. Cal. Oct. 14, 2020), and does not require defendants to meet the plausibility pleading standard set forth in *Twombly and Iqbal*, see *Pauly*, 2022 WL 103546, at \*3 (“Having considered the parties’ arguments and surveyed the cases discussing the applicability of *Twombly* and *Iqbal* to affirmative defenses, the Court concludes that affirmative defenses are governed by the standard of fair notice—not plausibility pleading.” (citation omitted)).

### 1 **III. ARGUMENT**

2 MLW argues that WWE’s affirmative defenses should be stricken for two reasons. Mot.  
 3 5–6. First, MLW claims that WWE has inadequately pleaded its affirmative defenses such that  
 4 MLW lacks “fair notice” of the bases for WWE’s defenses. *Id.* at 5. Second, MLW claims that  
 5 certain defenses should be stricken because WWE does not have the burden of proving them (or  
 6 because they are not “actual” affirmative defenses). *Id.* at 5–6. Both arguments are meritless,  
 7 and MLW’s motion should be denied. In the alternative, the Court should permit WWE to file  
 8 the amended answer attached as Exhibit A (with a redline attached as Exhibit B) and deny  
 9 MLW’s motion as moot.

#### 10 **A. MLW’s Motion Should Be Denied Because WWE’s Answer Provides MLW** 11 **with Fair Notice of WWE’s Defenses and MLW Cannot Show Prejudice**

##### 12 ***i. WWE’s Answer Provides MLW with Fair Notice of the Bases for*** 13 ***WWE’s Defenses***

14 Courts in nearly every district in the Ninth Circuit have recognized that affirmative  
 15 defenses need only be pleaded in “general terms” under the “fair notice” pleading standard.<sup>1</sup> *See*

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16 <sup>1</sup> *See also Ameristar Fence Prods., Inc. v. Phoenix Fence Co.*, 2010 WL 2803907, at \*1 (D.  
 17 Ariz. July 15, 2010) (“The Court is of the view that the pleading standards enunciated in  
 18 *Twombly* and [*Iqbal*] have no application to affirmative defenses pled under Rule 8(c).”);  
 19 *People of Los Angeles Cnty. v. Villanueva*, 2022 WL 3575322, at \*1 (C.D. Cal. July 14,  
 20 2022) (“this Court applies the more lenient ‘fair notice’ pleading standard to affirmative  
 21 defenses, not the heightened standard of *Twombly* and *Iqbal*”); *Estrada v. Vanderpoel*, 2017  
 22 WL 4758843, at \*1 (E.D. Cal. Oct. 20, 2017) (applying *Kohler* and “fair notice” standard);  
 23 *Brooks v. Vitamin World USA Corp.*, 2021 WL 4777014, at \*2 (E.D. Cal. Oct. 13, 2021)  
 24 (“[T]his Court applies the ‘fair notice’ standard, and not the heightened pleading standard  
 25 announced in *Twombly* and *Iqbal*, when evaluating motions to strike affirmative defenses.”);  
 26 *G & G Closed Cir. Events, LLC v. Timothy Parker & Diego & Dante, LLC*, 2021 WL  
 27 5299850, at \*5 (S.D. Cal. Aug. 2, 2021) (“After the Supreme Court announced a revised  
 28 pleading standard for affirmative claims for relief in *Twombly* and *Iqbal*, the Ninth Circuit

1 also 5 Charles Alan Wright & Arthur R. Miller, Federal Practice and Procedure § 1274 (4th ed.  
 2 2023) (“As numerous federal courts have held, an affirmative defense may be pleaded in general  
 3 terms and will be held to be sufficient, and therefore invulnerable to a motion to strike, as long as  
 4 it gives the plaintiff fair notice of the nature of the defense.”). WWE’s Affirmative Defenses, as

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6 continued to hold that affirmative defenses need only be pleaded according to the less  
 7 demanding ‘fair notice’ standard.”); *Raquinio v. City of Kailua Kona*, 2019 WL 508070, at  
 8 \*1 (D. Haw. Feb. 7, 2019) (“the *Twombly/Iqbal* standard does not apply to affirmative  
 9 defenses”); *McBurney v. Lowe’s Home Ctrs., LLC*, 2014 WL 2993087, at \*3 (D. Idaho  
 10 July 2, 2014) (“neither *Twombly* nor *Iqbal* addresses the pleading standard for affirmative  
 11 defenses”); *Cintron v. Title Fin. Corp.*, 2018 WL 692936, at \*2 (D. Mont. Feb. 1, 2018)  
 12 (“this Court declines to extend the *Twombly/Iqbal* pleading standards to affirmative  
 13 defenses”); *Ernest Bock, L.L.C. v. Steelman*, 2021 WL 4750726, at \*3 (D. Nev. Sept. 22,  
 14 2021) (“The Court finds the weight of authority from the Ninth Circuit and the District of  
 15 Nevada demonstrates that *Iqbal/Twombly*’s heightened pleadings standard does not apply to  
 16 these affirmative defenses.”); *McDonald v. Alayan*, 2016 WL 2841206, at \*2 (D. Or.  
 17 May 13, 2016) (finding that “‘fair notice’ is a different, less stringent standard than the  
 18 factual plausibility standard articulated in *Twombly* and *Iqbal*”); *Voltage Pictures, LLC v.*  
 19 *O’Leary*, 2016 WL 3693610, at \*3 (D. Or. June 21, 2016) (“[T]he affirmative defense  
 20 provides Plaintiffs fair notice of the nature of the defense and its factual basis, the inclusion  
 21 of the affirmative defense is not sufficiently prejudicial to Plaintiffs to require dismissal, and  
 22 motions to strike affirmative defenses are extremely disfavored.”); *Gergawy v. United States*  
 23 *Bakery, Inc.*, 2021 WL 608725, at \*3 (E.D. Wash. Feb. 16, 2021) (“this Court is persuaded  
 24 that the fair notice standard pleading standard under Federal Rule of Civil Procedure 8(c) still  
 25 applies, absent further guidance from the Ninth Circuit or the Supreme Court”); *White v.*  
 26 *Univ. of Washington*, 2023 WL 3582395, at \*5 (W.D. Wash. May 22, 2023) (“Absent clearer  
 27 guidance from the Supreme Court or the Ninth Circuit, the Court declines to adopt the  
 28 heightened plausibility pleading standard for asserting an affirmative defense.”).

1 pleaded in its August 14 Answer, meet this standard. In its motion, MLW argues for a  
 2 heightened standard requiring WWE to plead, without discovery, factual detail supporting each  
 3 of its Affirmative Defenses or else face the draconian result of having *all* such Defenses stricken.  
 4 The law does not support that result.

5 Applying a more relaxed pleading standard to affirmative defenses than the standard that  
 6 applies to complaint allegations is a distinction rooted in and consistent with the language of the  
 7 Federal Rules. Unlike complaints, which must contain “a short and plain statement of the claim  
 8 *showing that the pleader is entitled to relief*,” Fed. R. Civ. P. 8(a)(2) (emphasis added),  
 9 responsive pleadings need only “affirmatively *state* any . . . affirmative defense,” Fed. R. Civ. P.  
 10 8(c)(1) (emphasis added). “As *Twombly/Iqbal* standards are premised on Rule 8’s requirement  
 11 to make that ‘showing,’ it is not clear that they should be applied in the same way to defenses.”  
 12 *Bitglass, Inc. v. Netskope, Inc.*, 2021 WL 4499268, at \*1 n.2 (N.D. Cal. Mar. 19, 2021). “When  
 13 read together, the sub-parts of the rule appear to demand more from a party stating a claim for  
 14 relief, i.e., the party stating a claim must show he or she is entitled to relief. In contrast, a party  
 15 stating a defense need not show he or she is entitled to relief, but need only *state* any defense,  
 16 and state each defense ‘in short and plain terms.’” *Enough for Everyone, Inc. v. Provo Craft &*  
 17 *Novelty, Inc.*, 2012 WL 177576, at \*2 (C.D. Cal. Jan. 20, 2012) (emphasis in original).  
 18 “Requiring defendants to satisfy the *Iqbal/Twombly* pleading standard within twenty-one days of  
 19 being served with a complaint (where the plaintiff had two years or more depending [on] the  
 20 statute of limitations to investigate the facts and craft its complaint) would be inconsistent with  
 21 the language of Rules 8(c) and 12(f) . . . .” *Diamond Resorts U.S. Collection Dev., LLC v. Reed*  
 22 *Hein & Assocs., LLC*, 2020 WL 8475976, at \*2 (D. Nev. May 13, 2020).

23 Such a requirement also “would not be just, as a matter of policy.” *Id.* For example,  
 24 while “[p]ermitting a plaintiff to proceed on a conclusory or factually deficient complaint  
 25 potentially exposes the defendant to expensive and intrusive discovery, and to pressure to settle  
 26 the matter for its ‘nuisance value,’” “[i]n most cases, even the most conclusory affirmative  
 27 defenses do not impose similar burdens.” *Facebook, Inc. v. ConnectU LLC*, 2007 WL 2349324,  
 28 at \*1 (N.D. Cal. Aug. 14, 2007). Furthermore, “requiring affirmative defenses to satisfy

1 *Twombly* and *Iqbal*'s plausibility standard likely would lead to a proliferation of motions to  
 2 strike," a result that "[i]t is unlikely . . . the Supreme Court intended." *Craten v. Foster Poultry*  
 3 *Farms Inc.*, 2016 WL 3457899, at \*3 (D. Ariz. June 24, 2016).

4 Thus, while courts in this District have often applied the heightened plausibility pleading  
 5 standard to affirmative defenses, courts in this district have also (consistent with the prevailing  
 6 approach in the Ninth Circuit) appropriately denied motions to strike affirmative defenses where  
 7 defendants have met a standard of "fair notice" that is more relaxed than *Twombly* and *Iqbal*'s  
 8 plausibility requirement. For example, in *Pauly*, the court acknowledged that "[c]ourts are split"  
 9 on whether the heightened standard articulated in *Twombly* and *Iqbal* applies to affirmative  
 10 defenses, but explained that "[u]nder the predominant approach in the Ninth Circuit, a fairly  
 11 noticed affirmative defense must describe a defense in 'general terms' by identifying the legal  
 12 theory on which the defense rests, and 'need not assert facts making it plausible.'" 2022 WL  
 13 103546, at \*3 (quoting *Kohler*, 779 F.3d at 1019). Indeed, courts in this district have recognized  
 14 that even "boilerplate," "standard" affirmative defenses are "appropriate at the outset of the case  
 15 before discovery has commenced," *Vistan Corp. v. Fadei USA, Inc.*, 2011 WL 1544796, at \*7  
 16 (N.D. Cal. Apr. 25, 2011), and that an "assessment of the sufficiency of defenses is better left for  
 17 adjudication on the merits," not a motion to strike pre-discovery, *Williams v. Exeter Fin. LLC*,  
 18 2019 WL 6768317, at \*1 (N.D. Cal. Dec. 11, 2019). MLW's failure to acknowledge these cases  
 19 or the split in authority more generally is telling.

20 Under these standards, MLW has "fair notice" of the bases for WWE's affirmative  
 21 defenses sufficient to deny MLW's motion.

22 To begin, WWE has pleaded standard and well-recognized defenses, including unclean  
 23 hands and *in pari delicto* (third affirmative defense); estoppel, laches, and waiver (fourth  
 24 affirmative defense); mitigation of damages (seventh affirmative defense); causation (eighth and  
 25 ninth affirmative defenses); intervening or superseding cause (tenth affirmative defense); unjust  
 26 enrichment (eleventh affirmative defense); and economic or business justification (fourteenth  
 27 affirmative defense). Courts recognize that pleading such "standard" and "well-established"  
 28 defenses inherently provides fair notice to plaintiffs. *See Pac. Dental Servs., LLC v. Homeland*

1 *Ins. Co. of N.Y.*, 2013 WL 3776337, at \*3, \*6, \*8 (C.D. Cal. July 17, 2013).

2 For example, in *Vogel v. Linden Optometry APC*, the court denied the plaintiff's motion  
 3 to strike unclean hands, waiver, laches, and estoppel defenses (WWE's third and fourth  
 4 affirmative defenses here) pleaded "in a conclusory manner" with "no factual support in any  
 5 way," because "the nature of the defenses is well known, and Plaintiff can seek discovery  
 6 regarding the purported factual basis." 2013 WL 1831686, at \*5 (C.D. Cal. Apr. 30, 2013); *see*  
 7 *also Agricola Cuyuma SA v. Corona Seeds, Inc.*, 2019 WL 1878353, at \*3 (C.D. Cal. Feb. 20,  
 8 2019) (denying motion to strike because "unclean hands," "laches," and "unjust enrichment" are  
 9 "well-established," and "[s]imply naming these defenses is likely sufficient to provide fair  
 10 notice"). Similarly, courts in this district "routinely permit the pleading of a failure to mitigate  
 11 defense [WWE's seventh affirmative defense here] without specific factual allegations prior to  
 12 the completion of discovery." *Winns v. Exela Enter. Sols., Inc.*, 2021 WL 5632587, at \*5 (N.D.  
 13 Cal. Dec. 1, 2021); *see Fabian v. LeMahieu*, 2020 WL 3402800, at \*5 (N.D. Cal. June 19, 2020)  
 14 (collecting cases). In *Catch Curve, Inc. v. Integrated Glob. Concepts, Inc.*, the court held that an  
 15 affirmative defense asserting conduct "was taken in good faith based on legitimate business  
 16 justifications, lacked any wrongful intent, and in no way unreasonably restrained competition"  
 17 (similar to WWE's fourteenth affirmative defense here) provided movant with fair notice. 2012  
 18 WL 12541116, at \*3 (N.D. Ga. July 26, 2012); *see also Authenex, Inc. v. EMC Corp.*, 2010 WL  
 19 11507453, at \*5 (C.D. Cal. June 15, 2010) (finding that affirmative defense asserting that  
 20 "[c]laims by [plaintiff] for injunctive relief are barred as a matter of law because [plaintiff] has  
 21 an adequate remedy at law" provided fair notice).

22 Moreover, MLW has fair notice of WWE's defenses because it is self-evident how  
 23 WWE's defenses apply based on the facts as MLW has alleged them. For example, WWE's  
 24 estoppel, laches, and waiver defenses (fourth affirmative defense) are based on the proposition  
 25 that MLW's allegations cover events that purportedly spanned decades. MLW itself alleges that  
 26 "WWE has maintained its dominance through predatory, unfair and anti-competitive conduct  
 27 since at least 2001." ECF 64, First Amended Complaint ("FAC") ¶ 1. While WWE maintains  
 28 that allegation is entirely baseless, if MLW actually believes it to be true, it has offered no

legitimate reason for not seeking relief sooner. The basis for WWE’s causation-based defenses (eighth, ninth, and tenth affirmative defenses) is equally clear: any alleged injury to MLW was caused by forces in the marketplace other than WWE, including the independent decisions of broadcast partners like VICE TV, Tubi, and Reelz that opted against engaging in business with MLW, *see* FAC ¶¶ 7, 9, 11, as well as MLW’s failure to offer a quality product at an attractive price.

The purpose of applying *Twombly and Iqbal* to affirmative defenses, assuming that were the correct standard, is to “weed out” irrelevant boilerplate affirmative defenses. *AirWair Int’l Ltd. v. Schultz*, 84 F. Supp. 3d 943, 950 (N.D. Cal. 2015) (citations omitted). Here, however, there is no need to “weed out” irrelevant defenses where their relevance is self-evident. In other words, WWE’s defenses do not involve “unadorned, the defendant-unlawfully-harmed-me accusation[s].” *Perez v. Gordon & Wong L. Grp., P.C.*, 2012 WL 1029425, at \*8 (N.D. Cal. Mar. 26, 2012); *cf. Tongsui LLC v. LecocoLove LLC*, 2022 WL 541179, at \*5 (N.D. Cal. Feb. 23, 2022) (remarking that “[w]hile not a model of clarity,” the defendant’s “allegations are sufficient to give Plaintiffs ‘fair notice’ of the defense, since they support plausible inferences” of the elements of the relevant defense).

Given the context of the allegations as pleaded by MLW and the established nature of the defenses pleaded here, WWE’s statement of its affirmative defenses (while general) satisfy the Ninth Circuit’s requirement of describing defenses in “general terms” sufficient to provide MLW with “fair notice.” *Kohler*, 779 F.3d at 1019.

**ii. MLW Has Not Shown Prejudice Justifying Striking Any of WWE’s Defenses**

Regardless of the sufficiency of the pleadings, MLW’s motion to strike should be denied as to all of WWE’s affirmative defenses because MLW has failed to and cannot show that any prejudice would result from the Court denying MLW’s motion. “[M]otions to strike are rarely granted in the absence of a showing of prejudice to the moving party.” *Smith*, 2006 WL 2711468, at \*2 (internal quotation marks omitted). MLW’s motion is devoid of even any attempt to establish any such prejudice. And no prejudice exists, for reasons that courts have

1 recognized in analogous situations.

2 For example, as one court in the Ninth Circuit has explained, “insufficiently pleaded  
3 affirmative defenses”—indeed, “even the most conclusory affirmative defenses”—are unlikely to  
4 “render subject matter discoverable that is not already implicated by the allegations of the  
5 complaint. To determine the precise nature of the defendant’s affirmative defenses, plaintiff will  
6 rarely need do more than propound simple ‘state all facts’ interrogatories.” *Ctr. for Food Safety*,  
7 2019 WL 8356294, at \*2. Similarly, in *Perez v. Nuzon Corp.*, the court rejected the plaintiff’s  
8 motion to strike because “going through the answering pleadings line-by-line to excise the  
9 imperfect portions would be a pointless exercise.” 2016 WL 11002544, at \*3 (C.D. Cal. June 6,  
10 2016). “Defendants would be granted leave to amend, and in any case, the parties’ disputes over  
11 the merits of [plaintiff’s] claims are going to get litigated at some point, so there is little harm in  
12 having [d]efendants’ positions on those claims in the pleadings.” *Id.*

13 Here, WWE has already provided information about one of the key defenses that MLW  
14 seeks to strike, in response to MLW’s interrogatories. WWE has asserted a business or  
15 economic justification defense, stating that “WWE had legitimate business and/or economic  
16 justifications for the conduct at issue” (fourteenth affirmative defense). On July 19, 2023, before  
17 even having received WWE’s Answer, MLW served interrogatories that asked, among other  
18 things, for WWE to identify the “business rationale” for each type of allegedly anticompetitive  
19 contract provision alleged in its Amended Complaint. Then, without waiting for WWE’s  
20 answers (which were served on September 1), MLW filed this motion claiming it does not have  
21 “fair notice” of WWE’s defense. MLW’s actions demonstrate just how baseless and peremptory  
22 its motion really is. Clearly MLW was on notice that WWE would defend against its claims, in  
23 part, by asserting that there is a lawful and procompetitive business rationale for the challenged  
24 conduct—as is commonplace in antitrust cases, like this one, alleging conduct that is not *per se*  
25 illegal. And clearly MLW has suffered no prejudice by virtue of the fact that WWE did not  
26 elaborate on the factual basis for that defense in detail in its Answer, but rather did so two weeks  
27 later in an interrogatory response.

28 Moreover, the prejudice requirement holds equally true where plaintiffs move to strike

defenses on the basis that they are purportedly negative rather than affirmative defenses or denials of elements of claims rather than affirmative defenses (as MLW argues here, *see* Mot. 14). Courts refuse to strike such negative defenses or denials of elements of the plaintiff's claims purportedly mislabeled as affirmative defenses on the grounds that including such pleadings in the answer does not cause prejudice. *See Pauly*, 2022 WL 103546, at \*4 n.1 (denying motion to strike negative defenses labeled as affirmative defenses based on lack of prejudice); *Arthur v. Constellation Brands, Inc.*, 2016 WL 6248905, at \*3–4 (N.D. Cal. Oct. 26, 2016) (denying motion to strike defenses properly characterized as “denials of elements of his claims” rather than affirmative defenses because of a lack of prejudice); *Gilmore v. Liberty Life Assurance Co. of Bos.*, 2013 WL 12147724, at \*1 (N.D. Cal. Apr. 19, 2013) (denying motion to strike affirmative defense for “failure to state a claim” because “[w]hile, as a technical matter, plaintiff may be correct, the court finds that no prejudice would result from allowing the defenses to remain as pled”).<sup>2</sup>

While no prejudice exists from allowing insufficiently pleaded defenses to remain pleaded, courts recognize that there is, conversely, a substantial interest in conserving the resources of the parties and the Court in disallowing motion practice over these issues. Likewise, here, “the countervailing interest in conserving resources of the parties and the Court warrants denying this motion.” *Ctr. for Food Safety*, 2019 WL 8356294, at \*3; *Facebook, Inc.*,

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<sup>2</sup> *See also Hawkins v. Kroger Co.*, 2019 WL 6310553, at \*2 (S.D. Cal. Nov. 25, 2019) (“declin[ing] to strike” defenses of “failure to state a claim,” “lack of standing,” “causation,” and “unjust enrichment,” “simply because they were incorrectly labeled”); *Tattersalls Ltd. v. Wiener*, 2019 WL 669640, at \*3 (S.D. Cal. Feb. 19, 2019) (“Absent a showing of prejudice, classification of a defense as ‘affirmative’ or ‘negative’ does not necessitate that the offending answer be stricken. Although the Court agrees that Defendant has improperly pled negative offenses as affirmative defenses, Plaintiff has not shown how this mislabeling prejudices Plaintiff. The Court DENIES Plaintiff’s Motion to Strike the aforementioned defenses on this ground alone.”).

2007 WL 2349324, at \*2 (same). In *Bausch Health US*, the court similarly denied a motion to strike affirmative defenses that allegedly “merely referenc[ed] legal doctrines without including adequate facts” in light of this “countervailing interest in conserving resources of the parties and the court.” 2019 WL 7708939, at \*2. MLW’s effort to force the Court into “micro-manag[ing] the pleadings” based on “technical points” without any showing of prejudice is unnecessary and wasteful. *McBurney v. Lowe’s Home Centers, LLC*, 2014 WL 2993087, at \*3 (D. Idaho July 2, 2014).

**B. In the Alternative, the Court Should Deny MLW’s Motion as Moot and Grant Leave for WWE to File an Amended Answer**

In the alternative, WWE requests that the Court deny MLW’s motion as moot and asks for leave to file an amended answer, rendering MLW’s motion moot. Courts in this district have adopted this approach. For example, in *Howard v. Tanium, Inc.*, the court granted the defendant leave to file an amended answer and denied plaintiff’s motion to strike the defendant’s affirmative defenses as moot. 2022 WL 597028, at \*1 (N.D. Cal. Feb. 28, 2022); *see also Chavez v. Blue Sky Nat. Beverage Co.*, 2009 WL 10690397, at \*1 (N.D. Cal. Oct. 19, 2009) (recognizing as moot a motion to strike 14 affirmative defenses that were withdrawn in defendant’s amended answer); *Gordon & Wong L. Grp.*, 2012 WL 1029425, at \*8 (“When striking an affirmative defense, leave to amend should be freely given so long as no prejudice to the moving party results.”). Leave to amend is especially appropriate here given the split in authority on the pleading standard. WWE includes as Exhibit A a proposed Amended Answer (with a redline against the prior Answer attached as Exhibit B) that withdraws certain Affirmative Defenses and adds factual allegations in support of the remaining Affirmative Defenses. *See* Exhibits A, B. To the extent any question remains as to whether MLW has received fair notice of WWE’s defenses, the Amended Answer conclusively resolves that question.

**CONCLUSION**

For the foregoing reasons, WWE respectfully requests that the Court deny MLW's motion to strike.

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Respectfully submitted,

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